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Before
The
Surface Transportation Board

In the matter of

Ex Parte 582 (Sub-No. 1)
Major Rail Consolidation Procedures

Reply
Of

James Johnson
Traffic Manager
Empire Wholesale Lumber Co.

By
James Johnson
Traffic Manager
Empire Wholesale Lumber Co.
P O Box 249
Akron OH 44309

June 2, 2000

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Ex Parte 582 (Sub-No. 1)
Major Rail Consolidation Procedures

Comes now James Johnson, on behalf of Empire Wholesale Lumber Co., and respectfully requests that the following reply to comments be entered into the official record of this proceeding.

Identity of Witness

My name is James Johnson. I have over 35 years experience in interstate and foreign surface transportation. I have been honored for the past four years to be a shipper representative on the Railroad-Shippers Transportation Advisory Council. For the past 14 years I have been employed by Empire Wholesale Lumber Co. of Akron OH as traffic manager of this wholesale distributor of forest products. Empire trades in forest products produced in Canada and the United States. Empire moves products in carload and truckload quantities, virtually all of our over $160,000,000 in annual sales are in the United States. Additionally, I am the Chairman of the Summit County Port Authority.

The following brief replies to a few of the multitude of assorted comments of various parties are respectfully offered for your consideration.

Reply to Comments

Numerous entities, like the Western Coal Transportation Association, have suggested that the STB develop a range of remedies for service failures, including: "... trackage rights from competing rail carriers, terminal or regional access, opening of gateways, contracted third party services, railcar supply, modified local operating agreements, joint operating agreements, overhead rights, reciprocal switching, and divestiture, and more." (Western Coal Transportation Association statement, page 5).

To a shipper, all of those remedies may sound reasonable; unfortunately, in the last three instances of overwhelmed merger survivors, the absolute last thing that the railroads needed, or could physically accommodate, was additional congestion on their already gridlocked lines. Only the suggested joint operating agreements and divestiture remedies could have possibly contributed in a timely fashion to correct the problems experienced by users of Union Pacific, and to a far lesser degree, CSX Transportation and Norfolk Southern. The Board must adopt policies that avoid or correct systemic deficiencies and avoid a "floggings will continue until morale improves" mindset.

Some comments on Cross-Border issues call for "...penalties or process mechanism ... to assure that [cross border] subsidies do not exist prior to any such

merger being considered." (Seneca Sawmill Company, page 2). Seneca's perception is that the current railroad contract rules appear to pervert the marketing of lumber in favor of certain lumber producers. In the twilight world of bilateral confidential contracts, and unsigned rate quotes, attaining an absolute assurance requires full-blown public rate filing on both sides of the border. At a minimum, the Board must understand that railroad service and rate agreements (including volume discounts and other contractual devices) cause distortions in the marketing of lumber. Further, the Board must recognize that every policy or practice that distorts the natural market competitive forces will result in advantages for some and disadvantages for others. The Board must be diligent in exploring all ramifications of Board decisions, including those that spill out of transportation into the realm of marketing or international trade.

Many cross border issues must be addressed. In particular, the comments by the Seneca Sawmill Company and those of the North Dakota Grain Association relative to the Canadian Wheat Board should concern the Board. Those statements demonstrate that there are several instances, involving grains and lumber, under which Canadian governmental policies conflict with U. S. laws and could result in preferential car supply and rate or service standards for Canadian companies who participate in the U. S. economy in direct competition with U. S. companies served by the same railroad.

The Clay Producers Traffic Association has called for the STB to mandate that railroads be held responsible for all harm caused by poorly planned mega-mergers. That liability currently exists in the laws of the United States and Canada. The practical point of the matter is how does a shipper who is dependent upon rail service enforce its legal rights and not inflict fatal damage upon itself in the process. An unreasonable threshold of proof does not stifle self-help action; it is stifled by the sage advice, "don't tug on Superman's cape". To hold railroads responsible for their mistakes one must first recognize that every railroad is very capable of retaliation. And one must realize that the true cost of poor service is magnitudes greater than just additional freight costs. A rail shipper experiencing poor service during a merger meltdown – or in retaliation for some perceived insult or pain inflicted – is in grave danger of losing its customers. Purchase of alternate rail or highway transportation, leasing additional private cars, or other expensive undertakings may or may not satisfy the shipper's customer. No shipper is immune to being relegated to second preferred vendor status as a result of chronic late deliveries. Too many second preferred vendor status situations equals economic failure in the marketplace. Any arbitration or other enforcement of rational liability standards must include lengthy monitoring of service after the service level returns to "normal". And an investigative arm similar to the Interstate Commerce Commission's field staff of Railroad Service Agents would best monitor the continued provision of adequate and market neutral services.

A number of entities have referred to the need for reasonable, accessible and affordable means to obtain relief from abuse. If the Board will promptly populate the roster of arbitrators recommended by the Railroad-Shipper Transportation Advisory Council, and established by the Board in Ex Parte 560, a reasonable, accessible and affordable means to obtain relief from abuse will be made available.

The Department of Transportation (DOT) comments recommend that in future mergers the applicants "... must be required to present strong evidence of the steps they would take to minimize risk and provide public benefits." Further, DOT states, "A healthy, competitive railroad industry is vital to our national transportation system and to our economy as a whole. The Board must work actively to help achieve and maintain that goal, approving mergers that would foster that result and rejecting those that would not." Presumably, "...that goal ..." and "... that result ..." refer to "... A healthy, competitive railroad industry..." The DOT statement errs in accepting the premise that additional mergers will provide any public benefits. No corporate entity – including a railroad - proceeds with a merger to provide benefits to the public. Mergers are the pursuit of profit for the merger partners. A more realistic view was stated by the North Dakota Grain Dealers Association, which stated, "Service disruptions may be temporary but monopoly powers, both pricing and service levels, are forever." A healthy, competitive railroad industry must not be the focus of the Board's decisions; a healthy non-transportation sector of the economy must be the Board's focus, and that will often require decisions that are detrimental to the merging railroads.

Thank you for the opportunity to file the above comments.

Respectfully submitted,

James Johnson
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Dated: June 2, 2000

Certificate of Service

I hereby certify that this 5th day of June, 2000, I have served a copy of the forgoing on all known parties of record on the Service List in accordance with the Board's Rules of Practice.

James Johnson